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7 Attorneys for Defendant UNITED STATES OF AMERICA

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 JO FAY and THOMAS FAY, ) No. C 04-3588 CRB and C 05-1481 CRB  
13 Plaintiffs, )  
14 v. ) STIPULATION AND [PROPOSED]  
15 UNITED STATES OF AMERICA, ) ORDER APPROVING COMPROMISE  
16 Defendant. ) SETTLEMENT

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28 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT  
C 04-3588 CRB  
C 05-1481 CRB

1 IT IS HEREBY STIPULATED by and between Plaintiffs Jo Ann Fay and Thomas Fay  
 2 (collectively "Plaintiffs") and Defendant United States of America, as follows:

3 1. The parties do hereby agree to settle and compromise Jo Fay and Thomas Fay v.  
 4 United States of America (Northern District of California Case Number C 04-3588 CRB) and the  
 5 related case of the same title (Northern District of California Case Number C 05-1481 CRB),  
 6 under the terms and conditions set forth herein.

7 2. Defendant United States of America agrees to pay to Plaintiffs Jo Ann Fay and  
 8 Thomas Fay collectively the sum of thirty five thousand dollars and no cents  
 9 (\$ 35,000 .00), which sum shall be in full settlement and satisfaction of any and all claims,  
 10 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason  
 11 of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,  
 12 damage to property and the consequences thereof, resulting, and to result, from the same subject  
 13 matter that gave rise to the above-captioned lawsuit, including any claims for wrongful death, for  
 14 which Plaintiffs or their heirs, executors, administrators, or assigns, and each of them, now have  
 15 or may hereafter acquire against the United States of America, its agencies, agents, servants, and  
 16 employees.

17 3. Plaintiffs and their heirs, executors, administrators or assigns hereby agree to  
 18 accept the sum listed in paragraph 2 in full settlement and satisfaction of any and all claims,  
 19 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason  
 20 of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,  
 21 damage to property and the consequences thereof which they may have or hereafter acquire  
 22 against the United States of America, its agencies, agents, servants and employees on account of  
 23 the same subject matter that gave rise to the above-captioned lawsuit, including any future claim  
 24 for wrongful death. Plaintiffs and their heirs, executors, administrators or assigns further agree  
 25 to reimburse, indemnify and hold harmless the United States of America, its agencies, agents,  
 26 servants or employees from any and all such causes of action, claims, liens, rights, or subrogated  
 27 or contribution interests incident to or resulting from further litigation or the prosecution of

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 STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT  
 C 02-3246 VRW

1 claims by Plaintiffs or their heirs, executors, administrators or assigns against any third party or  
2 against the United States, including claims for wrongful death.

3 4. This stipulation for compromise settlement shall not constitute an admission of  
liability or fault on the part of the United States, its agencies, agents, servants, or employees, and  
5 is entered into by the parties for the purpose of compromising disputed claims and avoiding the  
6 expenses and risks of litigation.

7 5. This Agreement may be pled as a full and complete defense to any subsequent  
action or other proceeding involving any person or party which arises out of the claims released  
9 and discharged by the Agreement.

10 6. It is also agreed, by and among the parties, that the settlement amount of  
11 thirty five thousand dollars and no cents (\$ 35,000.00) to Plaintiffs  
12 collectively represents the entire amount of the compromise settlement and that the respective  
13 parties will each bear their own costs, fees, and expenses and that any attorneys' fees or liens  
14 owed by Plaintiffs will be paid out of the settlement amount and not in addition thereto.

15 7. It is also understood by and among the parties that, pursuant to Title 28, United  
16 States Code, Section 2678, attorneys' fees for services rendered in connection with this action  
17 shall not exceed 25 percent of the amount of the compromise settlement.

18 8. Payment of the settlement amount will be made by a check drawn on the United  
19 States Postal Service for thirty five thousand dollars and no cents (\$ 35,000.00)  
20 and made payable to Jo Ann Fay, Thomas Fay and the Law Offices of Bennett, Johnson &  
21 Galler.

22 9. In consideration of this Agreement and the payment of the foregoing amount  
23 thereunder, Plaintiffs agree that upon notification that the settlement check is ready for delivery,  
24 they will deliver to Defendant's counsel a fully executed Stipulation of Dismissal with prejudice  
25 of Jo Fay and Thomas Fay v. United States of America, C 04-3588 CRB and the related case Jo  
26 Fay and Thomas Fay v. United States of America, C 05-1481 CRB. Upon delivery of the  
27 Stipulations of Dismissal, Defendant's counsel will release the settlement check to Plaintiffs'

1 counsel or his agent.

2 10. Plaintiffs have been informed that payment may take sixty days or more to  
3 process, but Defendant agrees to make good faith efforts to expeditiously process said payment.

4 11. The parties agree that should any dispute arise with respect to the implementation  
5 of the terms of this Agreement, Plaintiffs shall not seek to rescind the Agreement and pursue  
6 their original causes of action. Plaintiffs' sole remedy in such a dispute is an action to enforce  
7 the Agreement in district court. The parties agree that the district court will retain jurisdiction  
8 over this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

9 12. Plaintiffs hereby release and forever discharge the United States and any and all  
10 of its past and present officials, employees, agencies, agents, attorneys, their successors and  
11 assigns, from any and all obligations, damages, liabilities, actions, causes of action, claims and  
12 demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in  
13 equity, known or unknown, arising out of the allegations set forth in the pleadings in this action.

14 13. The provisions of California Civil Code Section 1542 are set forth below:

15 "A general release does not extend to claims which the creditor does not know or  
16 suspect to exist in his favor at the time of executing the release, which if known  
by him must have materially affected his settlement with the debtor."

17 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their  
18 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and  
19 all rights they may have pursuant to the provision of that statute and any similar provision of  
20 federal law. Plaintiffs understand that, if the facts concerning Plaintiffs' injuries and the liability  
21 of the government for damages pertaining thereto are found hereinafter to be other than or  
22 different from the facts now believed by them to be true, the Agreement shall be and remain  
23 effective notwithstanding such material difference.

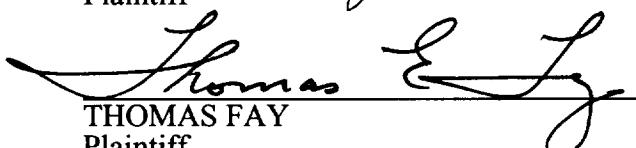
24 14. This instrument shall constitute the entire Agreement between the parties, and it is  
25 expressly understood and agreed that the Agreement has been freely and voluntarily entered into  
26 by the parties hereto with the advice of counsel, who have explained the legal effect of this  
27 Agreement. The parties further acknowledge that no warranties or representations have been  
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1 made on any subject other than as set forth in this Agreement. This Agreement may not be  
2 altered, modified or otherwise changed in any respect except by writing, duly executed by all of  
3 the parties or their authorized representatives.

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5 Dated: September 26, 2006

  
JO ANN FAY  
Plaintiff

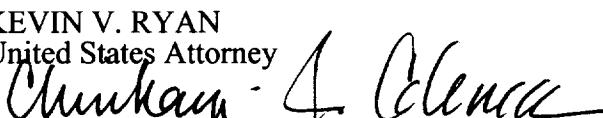
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7 Dated: September 26, 2006

  
THOMAS FAY  
Plaintiff

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9 Dated: September 26, 2006

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LAW OFFICES OF BENNETT, JOHNSON & GALLER  
RICHARD D. BENNETT  
Attorney for Plaintiffs

KEVIN V. RYAN  
United States Attorney

  
CHINHAYI J. COLEMAN

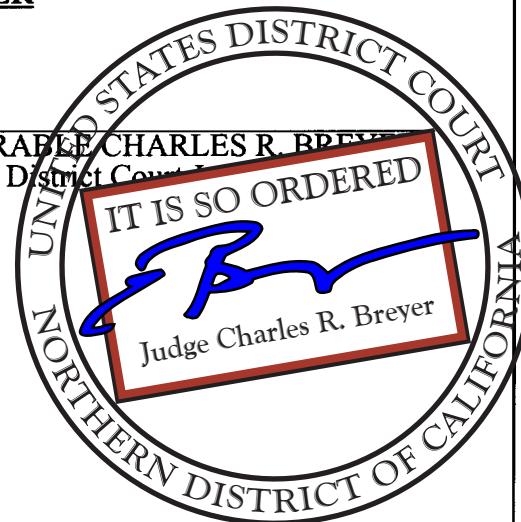
Assistant United States Attorney

**[PROPOSED] ORDER**

APPROVED AND SO ORDERED.

Dated: October 5, 2006

THE HONORABLE CHARLES R. BREYER  
United States District Court



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C 02-3246 VRW